BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES COUNTY OFFICE OF EDUCATION, TORRANCE UNIFIED SCHOOL DISTRICT, CALIFORNIA DEPARTMENT OF EDUCATION, CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, AND LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH.	OAH CASE NO. 2010110435 ORDER GRANTING THE CALIFORNIA DEPARTMENT OF EDUCATION'S MOTION TO DISMISS

On November 8, 2010, Student filed a Due Process Hearing Request (complaint) against the Los Angeles County Office of Education (LACOE), the Torrance Unified School District (TUSD), the California Department of Education (CDE), the California Health and Human Services Agency (CHHS), the California Department of Mental Health (CDMH), and the Los Angeles County Department of Mental Health (LACDMH). On November 30, 2010, CDE filed a motion to dismiss it as a party to this action, alleging that it is not an educational agency responsible for providing special education and related services to Student. On December 1, 2010, TUSD and LACOE filed an opposition to CDE's motion. Student also filed an opposition on December 1. On December 6, 2010, CDE filed its reply to Student's opposition.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their

parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

DISCUSSION

In the complaint, Student alleges that CDE is an appropriate party because of its supervisorial oversight of special education programs as the Statewide Educational Agency (SEA) under the Individuals with Disabilities Education Act (IDEA), as the SEA has the responsibility for the general supervision and implementation of IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) The complaint contends that CDE is an appropriate party due to LACDMH's refusal to provide students with mental health services because of the Governor's October 8, 2010 veto of state funding to county mental health agencies to provide mental health services for special education students pursuant to Government Code sections 7570, et seq.

The complaint raises no claims against CDE that it denied Student a FAPE and seeks no remedies from CDE, other than for CDE to exercise its supervisorial authority to ensure that Student receives a FAPE. Further the complaint makes no claims that CDE is a public agency involved in the provision of special education services or decisions regarding Student. The United States District Court decisions cited by Student for the proposition that CDE is an appropriate party are not applicable. For example, in *Orange County Dept. of Educ. v. A.S.* (2008) 567 F.Supp.2d 1165, the issue was which educational agency was responsible for providing special education services to a parentless child when the Orange County Juvenile Court had not appointed a legal guardian or responsible adult. The court found that CDE had responsibility by default under IDEA for providing a free appropriate

public education (FAPE) to the parentless child in absence of any California law designating local entity responsible for that education. (*Id.* at p. 1170.)[1]

In this case, Student's complaint indicates that he lives with his parent within the boundaries of TUSD, where he attends school, has been found eligible for special education, and has been provided special education and related services under an individualized education plan developed by that school district. Therefore, California law clearly designates the local entity responsible for FAPE.

TUSD and LACOE argue that where an LEA refuses or is unable to provide mental health services CDE becomes the responsible educational agency by default. This argument is not persuasive. Following it to its logical conclusion, any school district could merely state that it was unwilling to provide special education programming to an eligible student and thereby abdicate its responsibilities under both state and federal law. There is simply no basis under either the IDEA or the Education Code to support that proposition. California's statutory scheme creates school districts which are responsible for providing educational programming to students within their boundaries; CDE is, for most purposes, only has supervisorial responsibility for that programming and is not directly responsible for providing the educational programming or services.

Additionally, IDEA defines and limits the hearing officer's jurisdiction in due process proceedings. The issue of CDE's oversight of local education agencies to ensure their compliance with relevant special education law and regulations is outside the scope of OAH's jurisdiction.

Accordingly, CDE is not a necessary or proper party to the complaint.

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[1] In its reply to Student's opposition, CDE cites to numerous OAH decisions finding that it was not the local educational agency responsible for providing special education to the students who filed the cases. However, those cases are equally inapplicable to the instant matter, and therefore have not informed the ALJ's decision granting CDE's motion to dismiss. Like *Orange County Dept. of Educ. v. A.S*, the OAH decisions all involve students who were "parentless" and who therefore could not establish residency in a school district through a parent. As explained above, Student in the instant case is not parentless. Additionally, many of the cases cites are presently on appeal where the OAH decision have been reversed by the district courts who found CDE to be the LEA responsible for the special education of the "parentless" student. See, *e.g.*, *B.P. v. Orange County Dept. of Educ., et al.*, (May 3, 2010) SACV 09-000971 JVS (MLGx) (on appeal to the Ninth Circuit.)

ORDER

CDE's motion to dismiss itself as a party is granted. The matter will proceed against the other remaining parties as presently scheduled.

IT IS SO ORDERED.

Dated: December 09, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings